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No. 91-1729

In the Supreme Court of the United States

OCTOBER TERM, 1992

UNITED STATES OF AMERICA
AND
UNITED STATES DEPARTMENT OF AGRICULTURE,
PETITIONERS

v.

STATE OF TEXAS
AND
TEXAS DEPARTMENT OF HUMAN RESOURCES

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONERS

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QUESTION PRESENTED

Whether the United States retains its common-law right to collect prejudgment interest on debts owed by the States.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is reported at 951 F.2d 645. The opinion of the district court (Pet. App. 15a-29a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on January 28, 1992. The petition for a writ of cer-

tiorari was filed on April 27, 1992, and was granted on October 5, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The pertinent provisions of the Debt Collection Act of 1982, 31 U.S.C. 3701(c), 3717, the regulations promulgated thereunder, 4 C.F.R. 102.13(i), the Food Stamp Act, 7 U.S.C. 2016(f), and the regulations promulgated thereunder, 7 C.F.R. 272.2, 274.3 (1986), are reproduced at App., *infra*, 1a-7a.

STATEMENT

1. Congress adopted the Debt Collection Act of 1982, Pub. L. No. 97-365, 96 Stat. 1749,[1] to enhance and render more efficient the federal government's efforts to collect debts. See 96 Stat. 1749, Preamble. The Act requires federal agencies to assess interest on debts owed them, 31 U.S.C. 3717(a)(1), and to impose "a penalty charge of not more than 6 percent" on debts not paid within 90 days. 31 U.S.C. 3717(e)(2). Each federal agency must also assess "a charge to cover the cost of processing and handling a delinquent claim." 31 U.S.C. 3717(e)(1).

Section 3717, the provision of the Act governing imposition of interest, applies only to debts owed the United States by any "person." 31 U.S.C. 3717(a)(1). The Act provides that, for purposes of Section 3717, the term "person" does not include "an

[1] Pursuant to Pub. L. No. 97-452, 96 Stat. 2467, 2469-2474 (1983), portions of the Act were recodified at 31 U.S.C. 3701, 3716-3719. As part of that recodification, various non-substantive changes were made.

agency of the United States Government, of a State Government, or of a unit of general local government." 31 U.S.C. 3701(c).

2. The debts involved in this litigation arise from Texas's participation in the Food Stamp Program. Under that program, the Food and Nutrition Service (FNS) of the United States Department of Agriculture provides food stamp coupons to participating States for distribution to qualified individuals and households based on need. 7 U.S.C. 2013(a), 2014. The cost of the food stamps is borne entirely by the United States; the cost incurred by each participating State in the administration of the program is divided equally between the State and the federal government in most cases. 7 U.S.C. 2025(a).

Food stamp coupons are negotiable obligations of the United States, redeemable at face value for approved food products. 7 U.S.C. 2013, 2016. Thus, they can easily be used by persons other than their intended recipients. When coupons are lost or stolen before reaching their intended recipients, the intended recipients are entitled to receive replacement coupons. 7 C.F.R. 274.6. If the lost or stolen coupons are then redeemed illegally by a third party, the federal government ends up paying twice as much as it should: once for the replacement coupons redeemed by the intended recipients, and again for the illegally redeemed coupons.

The Food Stamp Program regulations allow participating States to distribute food stamp coupons by mail. 7 C.F.R. 274.3(a). States that elect to utilize that distribution method are, however, obligated to reimburse the federal government for a portion of the cost of replacing coupons that are lost or stolen

in the mail. 7 U.S.C. 2016(f). States must make reimbursement for all such mail issuance losses in excess of a "tolerance level" established by regulation. 7 C.F.R. 274.3.

3. At all times pertinent here, the State of Texas was a voluntary participant in the Food Stamp Program, and as such had contractually bound itself to comply with the federal regulations governing that program. See 7 C.F.R. 272.2(a)(2) and (b)(1) (1986) (setting forth the "Federal/State Agreement" under which the Food Stamp Program is operated by each participating State). As authorized by 7 C.F.R. 274.3(a) (1986), Texas chose to utilize the mails for a large proportion of its food stamp deliveries. Unfortunately, the State suffered substantial losses of mailed food stamp coupons, in part as a result of theft by United States Postal Service employees. Pet. App. 2a. Those losses exceeded the loss tolerance limits that had been established by the applicable federal regulations.[2]

The State's excess mail issuance losses (i.e., the losses in excess of the regulatory tolerance limits) amounted to $150,350 for the period from April 1986 through September 1986, and $262,035 for the period from October 1986 through March 1987.[3] The

[2] The regulatory loss tolerance limit applicable to the losses at issue in this case was set at 0.5% of each reporting area's total mail issuances for each calendar quarter. 7 C.F.R. 274.3 (c)(1)(i) (1986). That regulatory limit was based upon an examination of historical mail loss data which suggested that a mail loss limit of 0.5% would be a "realistically attainable goal." 47 Fed. Reg. 50,682 (1982).

[3] In the aggregate, the State suffered mail issuance losses of over $1.1 million between April 1986 and March 1987. Under the applicable regulations, the federal government assumed liability for all mail issuance losses below the regulatory tolerance limit. 7 C.F.R. 274.3(c)(4)(i) (1986). Thus, the federal government replaced all $1.1 million worth of food stamp coupons lost through the State's mail issuance program between April 1986 and March 1987, but sought reimbursement from the State for only $412,385. J.A. 6, 9.

FNS notified the State of its liability for those losses, and further advised the State that interest would begin to accrue on the balance outstanding unless payment was made within 30 days. Pet. App. 3a; J.A. 7-8, 10-11.

The State sought administrative relief, asking the FNS's State Food Stamp Appeals Board to grant waivers of the State's liability for the mail issuance losses. After conducting administrative hearings, the Appeals Board denied relief. Pet. App. 3a; J.A. 12-14, 15-17.

4. The State brought suit against petitioners in the United States District Court for the Western District of Texas, seeking judicial review of the Appeals Board's refusal to grant waivers of its liability for the mail issuance losses. The State contended that its excess mail losses should have been waived because a portion of those losses was caused by Postal Service employee theft. The State further claimed that the Debt Collection Act of 1982 precluded the imposition of interest on any amounts owed the federal government by the State.

The district court granted summary judgment in favor of petitioners on both issues. Pet. App. 30a-31a. The court held that the decision whether to grant a waiver of the State's liability was unreviewable because it was committed to agency discretion by law, citing *Heckler* v. *Chaney*, 470 U.S. 821 (1985), and *Webster* v. *Doe*, 486 U.S. 592 (1988). Pet. App.

19a-22a. The court ruled in the alternative that the denial of the State's requests for waivers was not arbitrary or capricious. *Id.* at 25a-26a.

The district court also concluded that the United States was entitled to receive prejudgment interest on the amounts owed by the State. The court acknowledged the existence of a circuit conflict on that issue, but adopted the views of the Tenth Circuit in *Gallegos* v. *Lyng*, 891 F.2d 788 (10th Cir. 1989), which held that the federal government's common-law right to prejudgment interest from the States survived the enactment of the Debt Collection Act. Pet. App. 26a-29a. The district court also rejected the State's contention that, under *Pennhurst State School & Hosp.* v. *Halderman*, 451 U.S. 1 (1981), imposition of prejudgment interest on the State was impermissible because the Food Stamp Act did not itself authorize such interest. The court explained that *Pennhurst* does not apply to the use of existing remedies against a State that fails to satisfy its duties under a federal program. Pet. App. 27a-28a (citing *Bell* v. *New Jersey*, 461 U.S. 773 (1983)).

5. The court of appeals affirmed in part and reversed in part. Pet. App. 1a-14a. The court agreed that the Appeals Board's decision not to waive the State's liability for excessive food stamp mail issuance losses was not judicially reviewable, and thus rejected the State's challenge to the district court's ruling on that issue. Pet. App. 5a-7a. The court reversed, however, that portion of the district court's judgment requiring the State to pay prejudgment interest. *Id.* at 7a-13a.

The court of appeals began its analysis by noting the existence of a circuit conflict on the prejudgment interest issue. Pet. App. 7a (citing *Perales* v. *United*

States, 751 F.2d 95 (2d Cir. 1984) (per curiam), aff'g 598 F. Supp. 19 (S.D.N.Y. 1984) (rejecting federal government's claim to prejudgment interest); *Pennsylvania Dep't of Public Welfare* v. *United States*, 781 F.2d 334 (3d Cir. 1986) (same); *Arkansas* v. *Block*, 825 F.2d 1254 (8th Cir. 1987) (same); and *Gallegos* v. *Lyng*, 891 F.2d 788 (10th Cir. 1989) (allowing federal government's claim for prejudgment interest)). Aligning itself with the Second, Third, and Eighth Circuits, the court held that "the Debt Collection Act of 1982 abrogated the federal common-law right to assess interest on outstanding debts of the states incurred under the mail issuance loss provision of the Food Stamp Act." Pet. App. 13a.

The court stated that there was "no discernible legislative history to guide us with this question," and that the purpose of the Debt Collection Act was "to tighten the collection process and create incentives for the timely payment of debts to the United States." Pet. App. 10a, 11a. The court rejected, however, the argument that abrogation of the United States' common-law right to prejudgment interest would create incentives for States to delay payment of their obligations under the Food Stamp Program, asserting that the federal government could enforce its claims against the States through administrative offset procedures. Pet. App. 11a (citing 7 U.S.C. 2016(f), 2022(a); 7 C.F.R. Pt. 276). The court found inapplicable the principle that implied repeals of the common law are disfavored, holding that Congress had expressly chosen to exclude States from the category of persons liable for prejudgment interest. For the same reason, the court also declined to defer to the

contemporaneous construction of the Act by the implementing agencies. Pet. App. 11a-12a.

Finally, the court drew additional support for its conclusion from *Pennhurst State School & Hosp.* v. *Halderman*, 451 U.S. 1, 17 (1981). The court noted that *Pennhurst* requires Congress to speak unambiguously when it seeks to impose conditions on the States pursuant to the spending power, and apparently concluded that *Pennhurst* governed in this case because the question of prejudgment interest was controlled by the applicable statutes. Pet. App. 13a.

SUMMARY OF ARGUMENT

I. The federal government's common-law right to collect prejudgment interest on debts owed by private parties and state and local governments has long been recognized. See, *e.g.*, *United States* v. *United States Fidelity & Guaranty Co.*, 236 U.S. 512, 528 (1915); *Board of County Commissioners* v. *United States*, 308 U.S. 343 (1939). The Debt Collection Act of 1982 codified and made mandatory the federal government's right to collect prejudgment interest from private parties, but did not affect the preexisting common-law rule with respect to the prejudgment-interest obligations of state and local governments.

A. The Debt Collection Act requires federal agencies to collect prejudgment interest from "person[s]." 31 U.S.C. 3717(a)(1). For purposes of Section 3717, however, the term "person" excludes state and local governments. 31 U.S.C. 3701(c). Thus, the Act expressly exempts those entities from its mandatory interest provisions, but does not affirmatively preclude collection of interest from those entities under the common law.

"Statutes which invade the common law * * * are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident." *Isbrandtsen Co.* v. *Johnson*, 343 U.S. 779, 783 (1952). Thus, where Congress has not provided a legal standard that directly resolves a particular question, recourse to federal common law is appropriate to "fil[l] a gap left by Congress' silence." *Mobil Oil Corp.* v. *Higginbotham*, 436 U.S. 618, 625 (1978).

Nothing in the text of the Debt Collection Act resolves the question whether the federal government retains its common-law right to collect prejudgment interest on debts owed by state and local governments. Instead, the Act merely declines to legislate with respect to that question. Accordingly, the common law rule continues to govern.

Congress's decision to exempt state and local governments from the provisions of Section 3717 is consistent with the conclusion that those entities remain subject to liability for prejudgment interest under the common law, because Section 3717 is considerably broader and more onerous than the common-law prejudgment-interest remedy. Under Section 3717, federal agencies are generally *required* to charge a specified interest rate, whereas the common law provides considerably more flexibility in determining whether prejudgment interest is appropriate and in selecting the rate of interest. Moreover, Section 3717 requires federal agencies to collect processing fees and delinquency penalties in addition to prejudgment interest; such fees and penalties are not available at common law. Given the nature of Section 3717, Congress may well have determined not to subject the States and local governments to its relatively strict provisions,

preferring instead to leave those entities subject to the more flexible and less onerous rule of the common law.

B. Even if it were not clear from the text of the Debt Collection Act that the federal government retains its common-law rights with respect to state and local governments, that conclusion would follow in any event, in light of the contemporaneous construction of the Act by the agencies responsible for its implementation. The General Accounting Office and the Department of Justice are charged with issuing regulations to implement the Debt Collection Act. 31 U.S.C. 3711(e)(2). In rulings and regulations issued shortly after adoption of the Act, those agencies took the position that the Act did not abrogate the federal government's common-law right to collect prejudgment interest on debts owed by state and local governments. See 4 C.F.R. 102.13(i); 49 Fed. Reg. 8889, 8894 (1984); Pet. App. 32a-45a. Deference is due to that reasonable agency interpretation of the statute. See *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-844 (1984).

C. The legislative history of the Act provides further support for the conclusion that Congress did not intend to abrogate the federal government's common-law right to collect prejudgment interest from state and local governments. The Act was intended "[t]o increase the efficiency of Government-wide efforts to collect debts owed the United States and to provide additional procedures for the collection of debts owed the United States." 96 Stat. 1749. In particular, Congress sought to increase the availability and use of the prejudgment-interest remedy in hopes of increasing incentives for debtors to pay their government debts. S. Rep. No. 378, 97th Cong., 2d Sess. 3, 17 (1982). Nowhere was it suggested that the prejudgment-interest obligations of any debtor should be *lessened*. Accordingly, the Act cannot be construed to abrogate the common-law obligations of state and local governments, because neither the text nor the legislative history of the statute demonstrates that Congress intended to achieve that result.

It is clear that permitting state and local governments to evade their common-law prejudgment-interest obligations would be directly inconsistent with the purposes of the Act. The court of appeals found no such inconsistency because it believed that the administrative-offset provisions of the Food Stamp Program would permit the federal government to recoup amounts owed by the States, but that reasoning was incorrect. States would be able to delay payment of their Food Stamp Program debts and avoid both prejudgment interest and administrative offset by seeking full administrative review of all federal claims. Moreover, abrogation of the federal government's right to prejudgment interest would have a similar negative impact on all federal cooperative grant programs, not merely the Food Stamp Program. Thus, acceptance of that result would conflict with the fundamental purposes of the Debt Collection Act by creating incentives for state and local governments to delay payment of debts owed to the federal government in a wide variety of contexts.

II. Imposition of prejudgment interest on the State in the circumstances of this case would not run afoul of the plain-statement rule announced in *Pennhurst State School & Hosp.* v. *Halderman*, 451 U.S. 1 (1981). In *Pennhurst*, the Court held that "Congress must express clearly its intent to impose

conditions on the grant of federal funds so that the States can knowingly decide whether or not to accept those funds." *Id.* at 24. But prejudgment interest is not "a new obligation for participating States"; rather, it is one of "the remedies available against a noncomplying State," so the *Pennhurst* rule is not applicable. See *Bell* v. *New Jersey*, 461 U.S. 773, 790 n.17 (1983). Moreover, the federal government *did* "express clearly its intent to impose" prejudgment interest on States that failed to pay their Food Stamp Program debts in a timely manner; the federal government's right to collect prejudgment interest from the States has been recognized for many years, and was expressly reaffirmed in regulations issued well before the State incurred the debts at issue in this case. 49 Fed. Reg. 8894 (1984).

III. The debts at issue in this case are contractual debts, not "penalties," and thus they are appropriately subject to prejudgment interest under the common law. In *Rodgers* v. *United States*, 332 U.S. 371 (1947), the Court held that civil penalties do not accrue prejudgment interest because they are more analogous to criminal fines than to traditional financial obligations. But Texas's Food Stamp Program debts were incurred as a result of the operation of regulations that are expressly incorporated as terms of the contractual relationship between the State and the federal government. 7 C.F.R. 272.2, 274.3 (1986). Moreover, those debts are not "penalties" intended to punish the State, but rather reflect the contractual allocation of a portion of the actual financial loss suffered as a result of mail issuance of food stamp coupons. Accordingly, Texas's debts are clearly contractual obligations that may properly be subjected to prejudgment interest under the common law.

ARGUMENT

THE UNITED STATES RETAINS ITS COMMON-LAW RIGHT TO COLLECT PREJUDGMENT INTEREST ON DEBTS OWED BY THE STATES

I. THE DEBT COLLECTION ACT DID NOT ABROGATE THE FEDERAL GOVERNMENT'S COMMON-LAW RIGHT TO COLLECT PREJUDGMENT INTEREST ON DEBTS OWED BY STATE AND LOCAL GOVERNMENTS

Under the common law, the United States has long been entitled to collect prejudgment interest on debts owed it by private parties. See, *e.g.*, *Billings* v. *United States*, 232 U.S. 261, 284-288 (1914); *United States* v. *United States Fidelity & Guaranty Co.*, 236 U.S. 512, 528 (1915). That common-law right extends to debts owed by state and local government debtors as well; in *Board of County Commissioners* v. *United States*, 308 U.S. 343 (1939), the Court indicated that state and local governments could be liable for prejudgment interest in appropriate circumstances, depending on the interests of the two governments involved and considerations of "public convenience." *Id.* at 351. More recently, in *West Virginia* v. *United States*, 479 U.S. 305 (1987), the Court reaffirmed "the longstanding [common-law] rule that parties owing debts to the Federal Government must pay prejudgment interest where the underlying claim is a contractual obligation to pay money," and applied that rule to a debt owed to the United States by a State. *Id.* at 310.

In the Debt Collection Act of 1982, Congress codified and strengthened the federal government's right to collect prejudgment interest on debts owed by private debtors. Congress chose not to apply that

new statutory prejudgment-interest remedy to state and local government debtors, but it is clear from the text, contemporaneous administrative construction, and legislative history of the Debt Collection Act that it did not displace the preexisting common-law rules governing the prejudgment-interest obligations of state and local governments. Accordingly, those common-law rules continue to govern the relationship between the federal and state governments in this area.

A. The Text Of The Debt Collection Act Of 1982 Demonstrates That Congress Did Not Intend To Abrogate The Federal Government's Common-Law Right To Collect Prejudgment Interest From State And Local Governments

1. The Debt Collection Act requires federal agencies to collect prejudgment interest on every obligation owed to the United States "by a person." 31 U.S.C. 3717(a)(1).[1] The Act provides that, for purposes of Section 3717, the term "person" "does not include an agency of the United States Government, of a State government, or of a unit of general local government." 31 U.S.C. 3701(c). As a consequence, it is undeniable that the Act does not itself require the federal government to collect prejudgment interest from state and local governments, because those entities are expressly exempted from coverage under Section 3717. On the other hand, it is equally clear that nothing in the text of the Act affirmatively *precludes* collection of prejudgment interest from those entities; rather, the Act simply does not address the subject of prejudgment interest on debts owed by state and local governments.

It is well established that statutes in derogation of the common law are to be strictly construed, and that congressional intent to override the common law will not be lightly inferred. "Statutes which invade the common law * * * are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident." *Isbrandtsen Co.* v. *Johnson*, 343 U.S. 779, 783 (1952). See also *Astoria Federal Sav. & Loan Ass'n* v. *Solimino*, 111 S. Ct. 2166, 2169-2170 (1991); *Midlantic Nat'l Bank* v. *New Jersey Dep't of Env'tl Protection*, 474 U.S. 494, 501 (1986) ("The normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific.").

Thus, only where Congress has "spoke[n] directly to a question" will congressional enactments be deemed to have supplanted the common law. *City of Milwaukee* v. *Illinois*, 451 U.S. 304, 315 (1981). Recourse to federal common law is inappropriate where

[1] In contrast to the rule under the common law, collection of prejudgment interest in circumstances covered by Section 3717 is generally mandatory: the statute provides that "[t]he head of an executive or legislative agency *shall* charge a minimum annual rate of interest on an outstanding debt on a United States Government claim owed by a person." 31 U.S.C. 3717(a)(1) (emphasis added). Section 3717 also provides, however, that agency heads may, in keeping with standards issued by the Attorney General and the Comptroller General, promulgate regulations identifying cases in which a waiver of the statutory requirement of prejudgment interest may be permitted. 31 U.S.C. 3717(h); *see* 4 C.F.R. 102.13(g) (permitting waiver of interest after 30-day grace period "only in accordance with regulations issued by the agency identifying the standards and appropriate circumstances for waiver").

a federal statute or regulatory scheme establishes a legal standard that provides an answer to the precise question at issue in a case. See *City of Milwaukee*, 451 U.S. at 317-326; *Mobil Oil Corp.* v. *Higginbotham*, 436 U.S. 618, 623-626 (1978). But where Congress has not legislated with respect to a particular question, reference to federal common law is appropriate to "fil[l] a gap left by Congress' silence." *Mobil Oil Corp.* v. *Higginbotham*, 436 U.S. at 625; see also *Astoria Federal Sav. & Loan Ass'n* v. *Solimino*, 111 S. Ct. at 2170 (common law continues to govern "where Congress has failed expressly or impliedly to evince any intention on the issue"); *City of Milwaukee*, 451 U.S. at 323, 324-325 n.18.

The Debt Collection Act does not speak directly to the question of the federal government's right to prejudgment interest on debts owed by state and local governments—it does not "address[] the problem formerly governed by federal common law." *City of Milwaukee*, 451 U.S. at 315 n.8. Instead, the Act merely exempts state and local governments from the Act's *requirement* that prejudgment interest be collected and says nothing whatsoever about the propriety of collecting interest from those entities in circumstances where it would be available under the common law. Congress's mere refusal to legislate with respect to the prejudgment-interest obligations of state and local governments falls far short of an expression of legislative intent to supplant the existing common law in that area. Accordingly, recourse to the common law is required to "fil[l] [the] gap left by Congress' silence." *Mobil Oil Corp.*, 436 U.S. at 625.

2. Construing the Act to leave intact the federal government's common-law rights as against state and local governments would not conflict with Congress's

decision to exempt those entities from the provisions of Section 3717. The common-law liability of state and local governments for prejudgment interest is not coterminous with the provisions of the Act, and thus any congressional intent to treat those entities differently than private parties for purposes of prejudgment interest can be given full effect without overturning the federal government's common-law rights.

Section 3717 establishes a mandatory prejudgment interest rate—"the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year, rounded to the nearest whole percentage point"—that must be imposed on all debts owed to the United States by "person[s]." 31 U.S.C. 3717(a). The common law, by contrast, is far more flexible, permitting the courts to look to "the relative equities between the beneficiaries of the obligation and those upon whom it has been imposed" and the other "general principles deemed relevant by the Court" in determining whether to impose prejudgment interest. *Rodgers* v. *United States*, 332 U.S. 371, 373 (1947). Imposition of prejudgment interest is far from automatic under the common law, particularly with respect to state and local government debtors: as the Court made clear in *West Virginia* v. *United States*, "before applying the usual rule regarding prejudgment interest as against a private party to a State, a federal court should consider the interests of the two governments involved." 479 U.S. at 309; see also *id.* at 311 n.3 (noting that equitable considerations may bar a common-law claim for prejudgment interest).[5] More-

[5] Section 3717 also sweeps more broadly than the common law in that it applies to all "amounts due" to the United

over, when prejudgment interest is imposed pursuant to the common law, the rate of interest is not necessarily the same as that called for by Section 3717; district courts instead may exercise wide discretion and look to a variety of sources in selecting the appropriate rate.[6]

The flexible nature of the common-law remedy is not the only significant difference between Section 3717 and the common law. In addition to mandating payment of prejudgment interest at the statutory rate, Section 3717 requires delinquent debtors to pay "a charge to cover the cost of processing and handling a delinquent claim." 31 U.S.C. 3717(e)(1); see 4 C.F.R. 102.13(d). Moreover, in the case of debts more than 90 days past due, "a penalty charge of not more than 6 percent a year" must be assessed on debtors subject to Section 3717. 31 U.S.C. 3717 (e)(2); see 4 C.F.R. 102.13(e). At common law, of course, neither processing fees nor penalty charges may be recovered.

In light of these differences between the common-law rule and Section 3717, Congress could well have

States, including civil fines and penalties as well as contractual debts. 31 U.S.C. 3701(b). Under the common law, by contrast, prejudgment interest is not available on criminal or civil fines. *Rodgers* v. *United States*, 332 U.S. 371 (1947).

[6] See, *e.g.*, *United States* v. *Dollar Rent A Car Systems, Inc.*, 712 F.2d 938, 940-941 (4th Cir. 1983); see also *Kilpatrick Marine Piling* v. *Fireman's Fund Ins. Co.*, 795 F.2d 940, 947-948 n.11 (11th Cir. 1986); *Equal Opportunity Employment Comm'n* v. *County of Erie*, 751 F.2d 79, 82 (2d Cir. 1984); *Sanders* v. *John Nuveen & Co.*, 524 F.2d 1064, 1075-1076 (7th Cir. 1975) (Stevens, J.), vacated on other grounds, 425 U.S. 929 (1976). In this case, the Department of Agriculture sought prejudgment interest at a rate of 7.625% per annum (see J.A. 7-8, 10-11), and the State did not dispute the appropriateness of that rate of interest.

decided, in the interests of federalism and comity, to leave state and local governments subject to the more flexible, and less onerous, regime of the common law rather than subjecting them to the strict and mandatory requirements of the Debt Collection Act. See *Gallegos* v. *Lyng*, 891 F.2d 788, 798 (10th Cir. 1989). That decision makes considerable sense, because the common-law rule permits courts to take account of the state or local governmental interests at stake in each case, and does not require the federal government to engage in the arguably unseemly activity of imposing delinquency penalties on sovereign States. In the absence of any statutory language suggesting a different outcome, therefore, the conclusion is inescapable that Congress did not intend to abrogate the federal government's common-law right to be made whole by seeking prejudgment interest from state and local government entities when it exempted those entities from the mandatory prejudgment-interest, processing-fee, and delinquency-penalty provisions of the Act.[7]

[7] The court of appeals justified its contrary decision in part by relying on Section 3717(g)(1), which renders Section 3717 inapplicable "if a statute, regulation required by statute, loan agreement or contract prohibits charging interest or assessing charges or explicitly fixes the interest or charges." The court reasoned that Section 3717(g)(1) was intended to allow "Congress to legislatively pick and choose where the imposition of interest is necessary." Pet. App. 12a. According to the court, Congress's failure to impose prejudgment interest under the Food Stamp Act in express terms demonstrated that Congress intended no prejudgment interest to be available in that context. *Ibid.* In suggesting that Section 3717(g)(1) sheds light on the prejudgment-interest obligations of state and local governments, however, the court of appeals ignored the fact that those entities are not subject to the provisions of

B. The Contemporaneous Construction Of The Debt Collection Act By The Agencies Charged With Administering It Further Demonstrates That The Act Did Not Abrogate The Federal Government's Common-Law Rights To Collect Prejudgment Interest From State And Local Governments

Fairly read, the Debt Collection Act cannot be construed to preclude imposition of prejudgment interest on the States and local governments under the common law. But even if the Court were not persuaded by that reading of the statute, the end result would be the same. At the very least, it must be conceded that the Act is reasonably susceptible of the interpretation that it leaves undisturbed the federal government's common-law rights in this area; that interpretation would not conflict in any way with the language, structure, or evident purposes of the Act. Accordingly, deference is due to the reasonable administrative determination that prejudgment interest is available in these circumstances.

The Department of Justice and the General Accounting Office (GAO) are charged with promulgating joint regulations to implement the Debt Collection Act. 31 U.S.C. 3711(e)(2). Those agencies have consistently viewed the Act as preserving the federal government's common-law right to seek prejudgment interest from state and local governments.

Shortly after adoption of the Act, GAO issued a ruling in which it concluded that the Debt Collection

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Section 3717 (including Section 3717(g)(1)) in the first place. 31 U.S.C. 3701(c). The obvious purpose of Section 3717(g)(1) was to allow for case-specific avoidance of the requirements of Section 3717 in circumstances where it would otherwise apply, not to cover the situation of debtors already exempted from that Section.

Act did not preclude the Department of Agriculture from relying on the common law to collect interest from state and local governments. See Decision No. B-212222 of the Comptroller General (Aug. 23, 1983), reproduced at Pet. App. 32a-36a. GAO later reaffirmed that position. See Letter from the Comptroller General to Senator Charles H. Percy (Jan. 5, 1984), reproduced at Pet. App. 37a-45a.

GAO and the Department of Justice conducted joint rulemaking proceedings to develop regulations implementing the Act. 49 Fed. Reg. 8889 (1984) (final rule); 48 Fed. Reg. 23,249 (1983) (proposed rule). The question whether common-law remedies survived the Debt Collection Act was explicitly raised in those proceedings. 49 Fed. Reg. 8889, 8894 (1984). The agencies concluded that "the Government has a judicially recognized common law right to charge interest on its debts" and that "the common law right to charge interest continues to exist." *Id.* at 8894. Accordingly, the final regulations implementing the Act provide that while "[t]he provisions of 31 U.S.C. 3717 do not apply * * * [t]o debts owed by any State or local government," federal "agencies are authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority." 49 Fed. Reg. 8901 (1984); 4 C.F.R. 102.13(i).

At a minimum, the Act is reasonably susceptible of the interpretation consistently articulated by GAO and the Department of Justice. Because that agency interpretation is a reasonable one, judicial deference is required. *Chevron U.S.A. Inc.* v. *Natural Resources*

Defense Council, Inc., 467 U.S. 837, 843-845 (1984); *National R.R. Passenger Corp.* v. *Boston & Maine Corp.*, 112 S. Ct. 1394, 1401 (1992). The rule of deference applies with particular force here, where the agency interpretation is a contemporaneous construction of the Act and is set forth in the implementing regulations themselves. *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965).[8]

C. The Legislative History Of The Debt Collection Act Supports The View That Congress Did Not Intend To Abrogate The Federal Government's Right To Collect Prejudgment Interest On Debts Owed By The States

1. As the court of appeals noted below, the provision of the Debt Collection Act exempting state and

[8] In their brief in opposition, respondents asserted that judicial deference is not due to the contemporaneous agency interpretations of the Debt Collection Act because such deference "applies more appropriately to interpretations of policy issues and not of questions of law." Br. in Opp. 18. Respondents err in assuming that agency interpretations of statutes can be neatly divided into "question of law" and "policy issues." Most agency decisions, including the decision at issue in this case, include elements of both law and policy.

In any event, as this Court's cases make clear, deference is due to an agency's reasonable interpretation of a statute it is charged to administer, even where that interpretation involves "questions of law" rather than "policy issues." See, *e.g.*, *National R.R. Passenger Corp.* v. *Boston & Maine Corp.*, 112 S. Ct. at 1401-1402 (deferring to agency interpretation of statutory phrase); *Rust* v. *Sullivan*, 111 S. Ct. 1759, 1767-1768 (1991) (same). Because the administrative interpretation of the Debt Collection Act does not conflict with the Act's plain language, judicial deference is required. *K Mart Corp.* v. *Cartier, Inc.*, 486 U.S. 281, 292 (1988); see also *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. at 843-845.

local governments from the definition of "person" was added on the Senate floor, and there is no legislative history explaining the reason for the amendment. Pet. App. 9a; see 128 Cong. Rec. 25,251-25,256 (1982); see also *West Virginia*, 479 U.S. at 312 n.6. Thus, nothing in the legislative history of the Act demonstrates the requisite "evident" "statutory purpose" to override the common law with respect to debts owed by state and local governments. *Isbrandtsen Co.* v. *Johnson*, 343 U.S. at 783. Accordingly, there is simply no basis for concluding that Congress intended to forbid collection of prejudgment interest from the States.

2. To the extent the legislative history of the Act sheds any light on Congress's intent in this area, moreover, it demonstrates that Congress would not have wanted to exempt state and local governments from their preexisting obligations to pay prejudgment interest under the common law. Congress's purpose in adopting the Act, as set forth in the Act's preamble, was "[t]o increase the efficiency of Government-wide efforts to collect debts owed the United States and to provide additional procedures for the collection of debts owed the United States." 96 Stat. 1749. Congress was concerned with the frequent failure of debtors to honor their obligations to the United States, and passed the Act solely in order to *strengthen* the collection process—not, as respondents apparently would have it, in order to create an incentive for state and local governments to evade their obligations to the United States.

The bill that became the Debt Collection Act was introduced in response to "increasing concern * * * expressed in Congress and elsewhere over the increasing backlog of unpaid debts owed the federal govern-

ment." S. Rep. No. 378, 97th Cong., 2d Sess. 2 (1982); see also *Hearings on S. 1249 Before the Senate Comm. on Governmental Affairs*, 97th Cong., 1st Sess. 1 (1981) (introductory remarks by Sen. Percy) ("The Federal Government's failure to collect billions of dollars in loans and other debts is a national outrage."). The Senate Committee on Governmental Affairs reported that a large proportion (over 50%) of debts owed to the federal government was overdue, and attributed this disturbing pattern of delinquencies to the fact that "[a]gencies do not have the motivation, resources, or tools to be aggressive and effective debt collectors." S. Rep. No. 378, *supra*, at 3.

One of the perceived weaknesses in the government's debt collection efforts was that "only limited use is made of interest charges to compensate for the government's cost of the money in the hands of the debtor." S. Rep. No. 378, *supra*, at 3. The Senate Report explained:

> In the absence of interest charges for delinquent payments, debtors have little or no incentive to make timely payments. Also, debtors are likely to pay their private sector debts first and their government debts last.

Id. at 17. See also *Senate Hearings*, *supra*, at 84 (testimony of Milton J. Socolar, Acting Comptroller General). Accordingly, the Act as ultimately adopted incorporated a variety of provisions to enhance the ability of federal agencies to collect debts and to recoup the full costs incurred as a result of debtors' failure to pay promptly.[9]

[9] As already noted, the Act mandated the imposition of prejudgment interest, penalties, and processing costs on private debtors who failed to pay their debts in a timely manner. Act § 11, 96 Stat. 1755-1756, codified as amended at 31 U.S.C. 3717. In addition, the Act *inter alia* (1) authorized greater use of credit bureaus by federal agencies, Act § 3, 96 Stat. 1749-1751, codified as amended at 31 U.S.C. 3701(a)(3), 3711(f)(1); (2) authorized agencies to utilize salary offsets to recover debts owed by federal employees, Act § 5, 96 Stat. 1751-1752, codified at 5 U.S.C. 5514; (3) made it a federal crime to kill or attempt to kill federal debt collection officials, Act § 6, 96 Stat. 1752, codified at 18 U.S.C. 1114; and (4) provided for collection of debts owed by private debtors through the use of administrative offsets, Act § 10, 96 Stat. 1754-1755, codified as amended at 31 U.S.C. 3716.

Congress's desire to tighten the incentives for prompt payment of debts owed the United States thus permeates the text and legislative history of the Act. Nowhere was it suggested that any debtor's burden should be alleviated. To be sure, Congress did ultimately choose not to include state and local governments within the category of "persons" subject to the mandatory prejudgment-interest, administrative-offset, delinquency-penalty, and processing-fee provisions of the Act, but there is no support for the proposition that Congress intended thereby to lessen the preexisting obligations of those entities. To the contrary, the Senate Report expressly recognized that state and local governments, while perhaps not the primary abusers of federal largesse, were nonetheless one component of the problem. See S. Rep. No. 378, *supra*, at 2 (referring to the "$126 billion * * * [of] domestic debt owed by individuals, businesses, educational institutions, *state and local governments*, and other organizations," but recognizing that the bulk of this debt was related to various federal loan programs) (emphasis added).

When the Debt Collection Act is read in light of its legislative history and purpose, the error of the

decision below is manifest. In effect, the court of appeals held that Congress affirmatively chose to create an incentive for state and local government debtors to delay payment of debts owed to the United States, and did so without any discussion or debate as part of a bill intended to *eliminate* incentives for such conduct. "[S]uch reticence while contemplating an important and controversial change in existing law is unlikely * * *. At the very least, one would expect some hint of a purpose to work such a change, but there was none." *Gallegos* v. *Lyng*, 891 F.2d at 799 (quoting *Edmonds* v. *Compagnie Generale Transatlantique*, 443 U.S. 256, 266-267 (1979)). Particularly in light of the rule that congressional intent to overturn the common law will not be lightly inferred, the absence of any statutory text or legislative history suggesting congressional intent to eliminate the federal government's common-law rights compels the conclusion that those rights survived passage of the Act.[10]

3. The court of appeals found no inconsistency between the result it reached and the purposes of the Act, because it did "not agree that the states will have an incentive to shirk their debts incurred under

[10] *After* enactment of the Act, Senator Percy, who sponsored the amendment excluding state and local governments from the definition of "person," opined that in his view the federal government's right to collect prejudgment interest from the States had been eliminated by the Act. As the court of appeals acknowledged, however, such *post hoc* views are "not entitled to probative weight in the determination of legislative intent." Pet. App. 9a; see, *e.g.*, *Pittston Coal Group* v. *Sebben*, 488 U.S. 105, 118-119 (1988); *Bread Political Action Comm.* v. *Federal Election Comm'n*, 455 U.S. 577, 582 n.3 (1982); *Regional Rail Reorg. Act Cases*, 419 U.S. 102, 132 (1974).

the Food Stamp Act if no interest is allowed." Pet. App. 11a. The court reasoned that the federal government could recover unpaid claims by utilizing the Food Stamp Program's administrative-offset procedure to withhold future payments to which the debtor State would otherwise be entitled. *Ibid.* (citing 7 U.S.C. 2016(f) and 2022(a); 7 C.F.R. Pt. 276). The court's reasoning was flawed in at least two respects.

In the first place, the court of appeals was simply wrong in its interpretation of the Food Stamp Act and implementing regulations. The regulations provide that "the filing of a timely appeal and request for administrative review shall automatically stay the action of FNS to collect the claim asserted against the State agency." 7 C.F.R. 276.7(e). Thus, unless the federal government is permitted to charge prejudment interest on state debts, the States will have an incentive to seek administrative review of all claims regardless of merit, because the federal government is not permitted to seek an administrative offset until the administrative review process has run its course.

More importantly, the fact that the Food Stamp Program may in some circumstances allow the federal government to limit its losses through the use of an administrative-offset procedure is not relevant to the broader question of statutory construction at issue in this case. The question before this Court is whether the Debt Collection Act displaces the federal government's common-law right to collect prejudgment interest on the full range of debts that may be owed it by the States. Even assuming *arguendo* that the purposes of the Act would not be frustrated if the States were permitted to evade prejudgment

interest on Food Stamp Program debts, it is incontrovertible that the Act's purposes would be frustrated in numerous other contexts, where no administrative-offset procedure is available.[11] The court of appeals erred in justifying its decision solely by reference to the particular statutory scheme at issue in this case, because the logic of its decision would apply to all federal agencies and programs that lack express statutory authorization for the collection of prejudgment interest.

II. IMPOSITION OF PREJUDGMENT INTEREST ON THE STATES IN THE CIRCUMSTANCES OF THIS CASE WOULD NOT CONFLICT WITH *PENNHURST* v. *HALDERMAN*

The court of appeals apparently concluded that imposition of prejudgment interest on the State would be impermissible under *Pennhurst State School & Hosp.* v. *Halderman*, 451 U.S. 1 (1981), because the Food Stamp Act and the Debt Collection Act do not themselves expressly require payment of interest under the circumstances of this case.[12] The court's reliance on *Pennhurst* was misplaced.

In *Pennhurst*, this Court declined to interpret precatory language in the Developmentally Disabled

[11] The Debt Collection Act itself created a general administrative-offset procedure. 31 U.S.C. 3716. State and local governments are expressly excluded from coverage under that provision, however, just as they are excluded from coverage under the prejudgment-interest provision. 31 U.S.C. 3701(c).

[12] Pet. App. 13a; see also *Arkansas* v. *Block*, 825 F.2d at 1258 n.7; *Perales* v. *United States*, 598 F. Supp. at 24. Contra *Gallegos* v. *Lyng*, 891 F.2d at 799-800; *Riles* v. *Bennett*, 831 F.2d 875, 877-878 & n.4 (9th Cir. 1987), cert. denied, 485 U.S. 988 (1988).

Assistance and Bill of Rights Act to impose affirmative obligations on States that accepted federal grants under the Act. The Court explained that "legislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions. The legitimacy of Congress' power to legislate under the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.'" 451 U.S. at 17. Accordingly, the Court announced a rule of statutory construction providing that "Congress must express clearly its intent to impose conditions on the grant of federal funds so that the States can knowingly decide whether or not to accept those funds." *Id.* at 24.

Pennhurst is inapposite to the question of the States' liability for prejudgment interest on debts owed the United States. Prejudgment interest does not constitute "a new obligation for participating States," but is instead one of "the remedies available against a noncomplying State," and thus does not run afoul of *Pennhurst*. *Bell* v. *New Jersey*, 461 U.S. 773, 790 n.17 (1983). The *Pennhurst* Court's concern about construing federal statutes to impose new "affirmative obligations" of "largely indeterminate" scope on the States, see 451 U.S. at 24, is simply not implicated in this case.

Moreover, the federal government *did* "express clearly its intent to impose" prejudgment interest on debts owed by the States. The federal government's common-law right to prejudgment interest is part of the backdrop against which all contracts with the United States are entered into, and thus the attempt to enforce that right is not a new "condi-

tion[]" on the grant of federal funds to the States.[13] The federal government's consistent position that prejudgment interest may be imposed on debts owed by state and local governments was a matter of public record and federal law long before respondents incurred the debts at issue in this case,[14] as was the obligation of States to reimburse the federal government for mail issuance losses in excess of the regulatory tolerance level.[15]

Had respondents wished to avoid the imposition of prejudgment interest on obligations incurred pursuant to the mail loss regulations, they could have done so by withdrawing from the Food Stamp Program prior to incurring those obligations. By failing to do so, respondents "voluntarily and knowingly accept[ed] the terms of the 'contract,'" *Pennhurst*, 451 U.S. at 17, and subjected themselves to the normal remedies available to the federal government when

[13] Indeed, the Court's decision in *West Virginia* v. *United States* makes that clear. In that case, no statute or contractual provision expressly called for imposition of prejudgment interest on the State's debts, but the Court had no difficulty concluding that interest was due under the common law.

[14] See 49 Fed. Reg. 8894 (1984); *Board of County Commissioners* v. *United States*, 308 U.S. 343 (1939). Indeed, even prior to passage of the Debt Collection Act and promulgation of its implementing regulations, the United States had issued regulations providing for the collection of prejudgment interest in appropriate circumstances. The Federal Claims Collection Standards, issued in 1966 under the authority of the Federal Claims Collection Act of 1966, Pub. L. No. 89-508, § 3, 80 Stat. 308, 309, authorized the collection of prejudgment interest on debts owed the United States. See 31 Fed. Reg. 13,381, 13,382 (1966); see also 44 Fed. Reg. 22,702 (1979).

[15] See 48 Fed. Reg. 15,223 (1983).

it seeks to enforce its contractual rights. See *Bell* v. *New Jersey*, 461 U.S. at 790. Having chosen to accept the substantial financial benefits provided by the federal government to the States pursuant to the Food Stamp Program, respondents cannot now be permitted to evade the federal government's efforts to enforce its contractual rights and remedies under that program.

III. RESPONDENTS' OBLIGATIONS TO THE UNITED STATES ARE CONTRACTUAL OBLIGATIONS AND NOT PENALTIES, AND THUS THEY ARE APPROPRIATELY SUBJECT TO PREJUDGMENT INTEREST

In their brief in opposition to the petition for certiorari, respondents asserted that their obligation to reimburse the United States for mail issuance losses did not give rise to a contractual debt at all. Instead, according to respondents, their obligation to the United States is a "penalty" imposed unilaterally and arbitrarily by the Secretary of Agriculture. Br. in Opp. 4-5. As a result, respondents conclude, no interest is due in this case, because "penalt[ies]" are not subject to prejudgment interest. *Id.* at 5 (citing *Rodgers* v. *United States*, 332 U.S. 371, 374-376 (1947)). That contention is incorrect.

1. The State of Texas voluntarily chose to participate in the Food Stamp Program,[16] and by so doing it contractually bound itself to comply with the federal regulations governing the program. Pet. 3-4;

[16] State participation in the Food Stamp Program is not mandatory, but is encouraged by the generous federal benefits provided under the program.

Br. in Opp. 1.[17] States participating in the program, including Texas, are required to sign a "Federal/State Agreement," which is "the legal agreement between the State and the Department of Agriculture" and "is the means by which the State elects to operate the Food Stamp Program." 7 C.F.R. 272.2(a)(2) (1986). Pursuant to the express terms of the Federal/State Agreement, each State and the Department of Agriculture contractually agree "to act in accordance with the provisions of the Food Stamp Act of 1977, as amended, [and its] implementing regulations * * *. The State and [the Department] further agree to fully comply with any changes in Federal law and regulations." 7 C.F.R. 272.2(b)(1) (1986). Thus, the federal Food Stamp Program regulations, and all amendments thereto, are expressly incorporated as terms of the contract between the federal government and each State that participates in the program.

The mail loss tolerance regulations applied in this case were adopted on an interim basis on November 9, 1982 (see 47 Fed. Reg. 50,681), and in final form on April 8, 1983 (see 48 Fed. Reg. 15,223). The mail issuance losses at issue here did not occur until 1986. Pet. 4. Thus, at the time those mail issuance losses were incurred, the contract between respondents and the United States expressly provided that respondents would reimburse the United States for all such losses in excess of the regulatory tolerance level. Respondents' belated attempt to deny the contractual nature of their debt is without foundation.

[17] Respondents appear to concede this point. Indeed, they specifically relied below on "[t]he 'contractual' nature of the relationship between the administering State agency and the federal government which arises from a State's participation in the Food Stamp Program." Resp. C.A. Br. 15.

2. Nor are respondents correct in asserting that their liability for excessive mail losses constitutes a "penalty" that is exempt from prejudgment interest under *Rodgers* v. *United States*, 332 U.S. 371 (1947). In *Rodgers*, the federal government imposed civil penalties on a farmer who marketed cotton in excess of his statutory quota, and sought to impose prejudgment interest on the penalty amount. The Court held that those penalties were more analogous to criminal fines—which do not accrue prejudgment interest—than to more traditional financial obligations, and accordingly declined "to add [prejudgment] interest to th[e] very substantial penalties already imposed upon non-cooperating farmers." 332 U.S. at 376.

This case, by contrast, involves recoupment pursuant to contract of actual financial losses suffered by the federal government, not the imposition of fines or penalties for the purpose of punishing prohibited conduct. The mail loss tolerance regulations do not impose penalties. Rather, they simply allocate to the States certain financial losses that result from the operation of the Food Stamp Program—losses that would otherwise be borne exclusively by the federal government, which is obligated to redeem food stamp coupons, including those issued as replacements for lost or stolen coupons. See 7 U.S.C. 2013(a); 7 C.F.R. 274.6. Since respondents' debt is a contractual obligation rather than a fine or penalty, imposition of prejudgment interest is appropriate. *West Virginia* v. *United States*, 479 U.S. 305, 310 (1987) ("[P]arties owing debts to the Federal Government must pay prejudgment interest *where the underlying claim is a contractual obligation to pay money*.") (emphasis added).

CONCLUSION

The judgment of the court of appeals should be reversed and remanded for further proceedings.

Respectfully submitted.

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APPENDIX

STATUTES AND REGULATIONS INVOLVED

1. 7 U.S.C.:

§ 2016. Issuance and use of coupons

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(f) State issuance liability

Notwithstanding any other provisions of this chapter, the State agency shall be strictly liable to the Secretary for any financial losses involved in the acceptance, storage and issuance of coupons, including any losses involving failure of a coupon issuer to comply with the requirements specified in section 2020(e)(20) of this title, except that in the case of losses resulting from the issuance and replacement of authorizations for coupons and allotments which are sent through the mail, the State agency shall be liable to the Secretary to the extent prescribed in the regulations promulgated by the Secretary.

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2. 31 U.S.C.:

§ 3701. Definitions and application

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(c) In sections 3716 and 3717 of this title, "person" does not include an agency of the United States Government, of a State government, or of a unit of general local government.

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§ 3717. Interest and penalty on claims

(a)(1) The head of an executive or legislative agency shall charge a minimum annual rate of interest on an outstanding debt on a United States Government claim owed by a person that is equal to the average investment rate for the Treasury tax and loan accounts for the 12-month period ending on September 30 of each year, rounded to the nearest whole percentage point. The Secretary of the Treasury shall publish the rate before November 1 of that year. The rate is effective on the first day of the next calendar quarter.

(2) The Secretary may change the rate of interest for a calendar quarter if the average investment rate for the 12-month period ending at the close of the prior calendar quarter, rounded to the nearest whole percentage point, is more or less than the existing published rate by 2 percentage points.

(b) Interest under subsection (a) of this section accrues from the date—

(1) on which notice is mailed after October 25, 1982, if notice was first mailed before October 25, 1982; or

(2) notice of the amount due is first mailed to the debtor at the most current address of the debtor available to the head of the executive or legislative agency, if notice is first mailed after October 24, 1982.

(c) The rate of interest charged under subsection (a) of this section—

(1) is the rate in effect on the date from which interest begins to accrue under subsection (b) of this section; and

(2) remains fixed at that rate for the duration of the indebtedness.

(d) Interest under subsection (a) of this section may not be charged if the amount due on the claim is paid within 30 days after the date from which interest accrues under subsection (b) of this section. The head of an executive or legislative agency may extend the 30-day period.

(e) The head of an executive or legislative agency shall assess on a claim owed by a person—

(1) a charge to cover the cost of processing and handling a delinquent claim; and

(2) a penalty charge of not more than 6 percent a year for failure to pay a part of a debt more than 90 days past due.

(f) Interest under subsection (a) of this section does not accrue on a charge assessed under subsection (e) of this section.

(g) This section does not apply—

(1) if a statute, regulation required by statute, loan agreement, or contract prohibits charging interest or assessing charges or explicitly fixes the interest or charges; and

(2) to a claim under a contract executed before October 25, 1982, that is in effect on October 25, 1982.

(h) In conformity with standards prescribed jointly by the Attorney General and the Comptroller General, the head of an executive or leg-

islative agency may prescribe regulations identifying circumstances appropriate to waiving collection of interest and charges under subsections (a) and (e) of this section. A waiver under the regulations is deemed to be complaince with this section.

3. 4 C.F.R.:

§ 102.13 Interest, penalties, and administrative costs.

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(i) *Exemptions.* (1) The provisions of 31 U.S.C. 3717 do not apply: (i) To debts owed by any State or local government;

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(2) However, agencies are authorized to assess interest and related charges on debts which are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

4. 7 C.F.R. (1986):

§ 272.2 Plan of operation.

(a) *General purpose and content*—

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(2) *Content.* The basic components of the State Plan of Operation are the Federal/State Agreement, the Budget Protection Statement, and the Program Activity Statement. * * * The Federal/State Agreement is the legal agreement between the State and the Department of Agriculture. This Agreement is the means by which

the State elects to operate the Food Stamp Program and to administer the program in accordance with the Food Stamp Act of 1977, as amended, regulations issued pursuant to the Act and the FNS-approved State Plan of Operations. * * *

(b) *Federal/State Agreement.* (1) The wording of the pre-printed Federal/State Agreement is as follows:

The State of —— and the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA), hereby agree to act in accordance with the provisions of the Food Stamp Act of 1977, as amended, implementing regulations and the FNS-approved State Plan of Operation. The State and FNS (USDA) further agree to fully comply with any changes in Federal law and regulations. This agreement may be modified with the mutual written consent of both parties.

PROVISIONS

The State agrees to: 1. Administer the program in accordance with the provisions contained in the Food Stamp Act of 1977, as amended, and in the manner prescribed by regulations issued pursuant to the Act; and to implement the FNS-approved State Plan of Operation.

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§ 274.3 Issuance of coupons through the mail.

(a) *Types of mail issuance systems.* The State agency may issue some or all of the coupon allotments through the mail. State agencies shall determine whether to use a regular mail issuance

system or a direct coupon mailing system. A regular mail issuance system is one which uses an authorization document as an intermediate step in mail issuance. A direct coupon mailing system is one which does not use an authorization document. The State agency shall design the controls and forms to operate a regular or direct coupon mail issuance system.

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(c) *Coupons lost in the mail prior to receipt.* (1) The State agency shall issue replacement coupons only if the coupons are reported stolen from the mail or lost in the mail in the period of their intended use and the household requesting the replacement has not already been issued two replacements in the previous 5 months.

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(2) On at least a monthly basis the State agency shall report all losses to the postal authorities. State agencies shall, in cooperation with the Postal Service, attempt to determine the cause of each nondelivery and take appropriate corrective action. State agencies shall also report to the postal authorities all patterns of losses in particular project areas or neighborhoods.

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(4) FNS will assume financial liability for coupons lost in the mail except as follows:

(i) In mail issuance reporting areas with $300,000 or more of mail issuance in a quarter, the State agency shall be strictly liable to FNS for the value of all mail issuance losses in excess of 0.75 percent during the 2nd, 3rd, and 4th

quarters of fiscal year 1983, and in excess of 0.5 percent per quarter thereafter, of the dollar value of each reporting unit's quarterly mail issuance.

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(iii) For the purpose of this section, "mail issuance" means all original coupon issuances distributed through the mail. "Mail loss" means all replacements of mail issuances except for replacements of returned mail issuances.

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